

Commission to Study the Comprehensive Shoreland Protection Act

Minutes of May 8, 2006 Meeting

Room 305, Legislative Office Building, Concord, NH

10:00 a.m. – 12:00 p.m.

Members Present

Interest Represented

House of Representatives
Office of Energy and Planning
Regional Planning Commissions
NH Lakes Association
At large waterfront owner
NH Association of Realtors
NH Municipal Association
NH Rivers Council
NH Timberland Owners
NH Conservation Commissions
NH Attorney General (designee)
NH Wildlife Federation
NH Waterworks Association

Representative

David Currier
Jennifer DeLong
Robert Snelling
William Smith, PhD
Michele Grennon
Tom Howard
Carol Granfield
Pat Schlesinger
Tom Hahn
Diane Hanley
Jennifer Patterson
James Kennedy
Stephen Del Deo

Members Absent

Senate
Senate
House of Representatives
NH DES
At large waterfront owner
NH Farm Bureau Federation
NH Home Builders and Remodelers
UNH (estuary)
NH Marine Trades Association
NH Natural Resource Scientists

Carl Johnson
John Gallus
Michael Whalley
Rene Pelletier
Eric Herr
John McPhail
Joe Landers
Jeff Schloss
Paul Goodwin
Cindy Balcius

Others in Attendance

Staff
NH DES
NH Lakes Association
NH Lakes Association
Pemigewasset River Local Advisory
Public
Plymouth State University

Arlene Allen for Darlene Forst
Mary Ann Tilton
Jared Teutsch
Joseph Farrrelly
Max Stamp
Tom Schlesinger
Steve Kahl, Presenter

10:10 a.m. Meeting opened.

Chairman David Currier called the meeting to order. William Smith introduced Dr. Steve Kahl from Plymouth State University who had been invited to speak on the issue of impervious surfaces. Dr. Karl gave a PowerPoint presentation entitled “Developing Variable-Width Lake Development Set-backs Using Imperviousness Criteria” (see attachments for a summary of the presentation).

Questions from members during the presentation raised the following issues:

- The general public would have a hard time with the classification of lawn as an impervious surface in the same category as patio, roof, pavement etc. Some adjustment, such as a sliding scale for lawn would need to be implemented or the use of the term “naturalized” surfaces versus “Impervious” surfaces might be more appropriate.
- The research presented did not address slopes. How do slopes factor into the criteria?
- Would the concept of allowing development within the shoreland up to an impervious surface limit and having variable widths based on impervious surface be defensible and understandable?
- Is there a need for a separate set of criteria for lakes and rivers?
- How would the criteria be applied to grandfathered properties?
- How would the concept of a well distributed stand work in conjunction with the criteria?

The presentation concluded at 11:10 a.m.

William Smith gave a report from the Natural Woodland Buffer Sub-Committee. He reported that the Sub-Committee felt the basal area method of calculating the amount of vegetation in the natural woodland buffer (NWB) is not useful and has been a source of disagreement, uncertainty and concern. In addition, it is not easy for lay people to understand or use.

The Sub-Committee is committed to the idea of some kind of woodland buffer between development and the waterbody and has taken seven options for the structuring of a natural woodland buffer and narrowed it down to two options. Mr. Smith indicated that he would be requesting a straw vote from the members after his report to determine which of the two options is preferred. The vote will allow the committee to focus on refining the one option that is preferred.

The first option is the establishment of a **50 foot No-Cut Zone** (i.e. there would be no cutting of any woody vegetation within 50’ of the reference line with the exception of hazard trees and a pathway to access the water and water dependent structures). In the industry, hazard trees are defined as trees with structural defects and a target such as a building or road – a tree that, if it fails, could cause personal injury or property damage. The no cut restriction, in terms of time, would be permanent. The no cut option would maximize the protection of surface water quality. Secondly, it would maximize the opportunity for a transparent, straightforward enforcement at state and local levels. It

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requires maximum use of high quality education and good science to defend it. The educational component is a critical factor in both of the options.

The downside is that this option imposes restrictions on the landowner and contractor.

Jennifer Patterson raised a question about grandfathering. Mr. Smith indicated that the issue of grandfathering would need to be taken up by the Sub-Committee.

A question was raised about established invasive species in the No-Cut Zone. Mr. Smith answered that the issue could be addressed by the Sub-Committee.

The second option is allowable cutting as determined by a **point system**. The idea, based on Maine's point system, requires an applicant, landowner or developer to inventory all the trees in a 150' area landward of the reference line. Within that 150', measurements would be made of tree diameters at breast height (4 ½ feet from the ground). The measurements could be made with a ruler, an inventory compiled, and points assigned to each tree based on the size of the tree. Points are totaled for a given area. A points threshold would be established for determining whether trees could be cut or not. For instance, using 12 points as a threshold, if the total for the area comes to less than 12, no cutting would be allowed in that area. If the total is more than 12 points, the area can be cut down to a level of 12 points. Points assigned to each tree size could vary. For example, Moultonborough currently assigns 1 point for a tree that is 4-6" in diameter, two points per tree for trees 6-12" in diameter, and 4 points per tree for trees over 12". Moultonborough uses a 25' x 25' square. The subject property is divided into a grid system with each grid measuring 25' x 25'. The trees are inventoried in each square and the points totaled. There would be no cutting of any woody vegetation below 3' in height.

The points system provides a way to quantify a well distributed stand. Species are not considered in the process. The species is irrelevant in regard to the ability of the roots to protect the integrity of the soil. Thus far, the Sub-Committee has not specified how large the given area would be. This would be a permanent option.

General discussion about the two options:

The issue of replacement trees would go back to sub-committee. Tom Howard indicated that he had recently attended real estate meetings in the Moultonborough area where a points system was discussed. He judged reactions there to be favorable to a points system but that a 75' no cut zone would be unacceptable. Robert Snelling added that as long as a de minimus density is achieved, it would meet the intent of what the Commission is trying to do.

Jennifer Patterson indicated that she felt her role on the commission is not to vote but to help facilitate putting into words what the will of the Commission is. She also raised a question about the point in time that any inventory would take place and added that the inventory might be cumbersome for landowners, although it is a key component in being able to enforce the natural woodland buffer.

Representative Currier stated that one of the problems with the existing statute is being able to know what is there for vegetation at a point in time and how much was cut over a 20 year period.

Mr. Smith indicated that the 2nd option eliminates the time factor. The points system establishes a base point – if you have 12 points no cutting can occur. If you have more than 12 points, cutting can occur until the points are reduced to 12.

Discussion regarding the Town of Moultonborough's points and permit system, woodland buffer, list of exceptions, e.g. hazard trees, use of aerial photos for determining baseline, de minimus standard.

Stephen Del Deo indicated that the Commission seemed to be moving toward resolution on the woodland buffer issue and that he felt the first option is the way to. He expressed concern that the points system was more sophisticated than the basal area system and much more education would be required to educate the public. Also, replacing trees may require a prescribed time frame as a landowner could potentially swap out trees over time and possibly leave areas open or soils exposed while the replacement process occurs. In addition, the planting survival success rate could be low, leaving the area open until the property owner gets around to replanting.

Mr. Howard responded that it had been noted during previous meetings of the Commission, that caution should be used about give recommendations to the legislature that are not viable politically. In addition, the no-cut option removes flexibility.

Discussion on the possibility of a moratorium on cutting while the Commission works through the issues.

Discussion on who is allowed to participate in the straw vote. It was agreed that members present and the designee present for a member could vote. A straw vote was taken on the two options.

Four in favor of the 1st Option (No-Cut)
Eight in favor of refining the 2nd Option (Points System)
One abstained

A majority of those present voted for the 2nd Option.

Jennifer Patterson gave a report from the Decision Tree Sub-Committee. She reported that the goal was to come up with a single decision tree that could be used by homeowners, municipalities, and agencies that would lay out in simple and understandable terms exactly what path needs to be followed depending on the project. She indicated that the beginning of a first draft is in the meeting handouts. The sub-committee determined that the approach that made the most sense was to structure the decision tree according to the complexity of the activity. For instance, a landowner that was simply applying fertilizer, would be off the chart fairly quickly. More complex activities would lead to the need to make additional decisions. The draft is based on the current law. The hope was to come up with a chart that had the requirements of the current law but also identified some of the points that have been the focus of discussions here, so that it could be determined where in the grand

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scheme of things these items fall. Accessory structures have not been addressed, yet, in the Decision Tree. The hope is that the Decision Tree will be completed by the next meeting.

General discussion about the decision tree.

Pat Schlesinger, the designee present for the NH Rivers Council, summarized the NH Rivers Council White Paper, an agenda item and included as a handout. She highlighted the problem of cumulative impacts, e.g., upstream impacts affecting downstream communities. She also added that when any upstream entity seeks a state permit, downstream communities should be notified as abutters.

Ms. Schlesinger also noted the following: the Pemigewasset and Saco should be covered under the CSPA; a definition is needed for constraints on the cutting allowed for equipment working in NWB; a 75' no cut buffer is needed; stream ordering should be revised.

General discussion about the Pemi and the Saco.

Mr. Howard reminded the Commission that at the last meeting, the issue was raised of incorporating the two rivers and it was agreed that it is not within the purview of Commission. Separate legislation would be appropriate for the two rivers.

Jim Kennedy indicated that in reference to stream ordering, UNH is currently updating a stream order listing which will be available at some point in the future.

The last item on the agenda was "establishing a process for the next few meetings".

Mr. Smith stated that identifying key remaining issues, e.g., permit or no permit, impervious surfaces option. His recommendation was to develop a short list of what items are most important and then decide whether to address the issues as a Commission or delegate to sub-committees.

General discussion about the permit issue and other issues that still need to be resolved by the Commission.

Need for closure on the issues. Bob Snelling will summarize a list of issues and send out to the commission members by e-mail. The list can be prioritized and decisions made over the next couple of meetings to either address the issue or not. It was agreed that the impervious surfaces approach will be assigned to the NWB Sub-Committee. Any member interested can join the NWB Sub-Committee. Efforts should be made to get out pertinent information to all members at least a week before the next meeting.

The next meeting will be the 12th of June.

Meeting adjourned at 12:10.

